

CHAPTER 14
THE MAINE CLEAN ELECTION ACT

21A § 1121. Short title

This chapter may be known and cited as the "Maine Clean Election Act."

21A § 1122. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Certified candidate. "Certified candidate" means a candidate running for Governor, State Senator or State Representative who chooses to participate in the Maine Clean Election Act and who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5.

2. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, section 12004-G, subsection 33.

3. Contribution. "Contribution" has the same meaning as in section 1012, subsection 2.

4. Fund. "Fund" means the Maine Clean Election Fund established in section 1124.

4-A. Immediate family. "Immediate family" has the same meaning as in section 1, subsection 20 and includes a candidate's domestic partner and the immediate family of the candidate's domestic partner.

5. Nonparticipating candidate. "Nonparticipating candidate" means a candidate running for Governor, State Senator or State Representative who does not choose to participate in the Maine Clean Election Act and who is not seeking to be certified as a Maine Clean Election Act candidate under section 1125, subsection 5.

6. Participating candidate. "Participating candidate" means a candidate who is running for Governor, State Senator or State Representative who is seeking to be certified as a Maine Clean Election Act candidate under section 1125, subsection 5.

7. Qualifying contribution. "Qualifying contribution" means a donation:

A. Of \$5 in the form of a check or a money order payable to the fund, signed by the contributor and made in support of a candidate;

B. Made by a registered voter within the electoral division for the office a candidate is seeking and whose voter registration has been verified by the municipal registrar;

C. Made during the designated qualifying period; and

D. That the contributor acknowledges was made with the contributor's personal funds and in support of the candidate and was not given in exchange for anything of value and that the candidate acknowledges was obtained with the candidate's

knowledge and approval and that nothing of value was given in exchange for the contribution, on forms provided by the commission.

8. Qualifying period. "Qualifying period" means the following.

A. For a gubernatorial participating candidate, the qualifying period begins November 1st immediately preceding the election year and ends at 5:00 p.m. on April 15th of the election year unless the candidate is unenrolled, in which case the period ends at 5:00 p.m. on June 2nd of the election year.

B. For State Senate or State House of Representatives participating candidates, the qualifying period begins January 1st of the election year and ends at 5:00 p.m. on April 15th of that election year unless the candidate is unenrolled, in which case the period ends at 5:00 p.m. on June 2nd of the election year.

9. Seed money contribution. "Seed money contribution" means a contribution of no more than \$100 per individual made to a participating candidate, including the candidate or the candidate's spouse or domestic partner.

21A § 1123. Alternative campaign financing option

This chapter establishes an alternative campaign financing option available to candidates running for Governor, State Senator and State Representative. This alternative campaign financing option is available to candidates for elections to be held beginning in the year 2000. The commission shall administer this Act and the fund. Candidates participating in the Maine Clean Election Act must also comply with all other applicable election and campaign laws and regulations.

21A § 1124. The Maine Clean Election Fund established; sources of funding

1. Established. The Maine Clean Election Fund is established to finance the election campaigns of certified Maine Clean Election Act candidates running for Governor, State Senator and State Representative and to pay administrative and enforcement costs of the commission related to this Act. The fund is a special, dedicated, nonlapsing fund and any interest generated by the fund is credited to the fund. The commission shall administer the fund.

2. Sources of funding. The following must be deposited in the fund:

A. The qualifying contributions required under section 1125 when those contributions are submitted to the commission;

B. Two million dollars of the revenues from the taxes imposed under Title 36, Parts 3 and 8 and credited to the General Fund, transferred to the fund by the Treasurer of State on or before January 1st of each year, beginning January 1, 1999. These revenues must be offset in an equitable manner by an equivalent reduction within the administrative divisions of the legislative branch and executive branch agencies. This section may not affect the funds distributed to the Local Government Fund under Title 30-A, section 5681.

C. Revenue from a tax check off program allowing a resident of the State who files a tax return with the State Tax Assessor to designate that \$3 be paid into the fund. If a husband and wife file a joint return, each spouse may designate that \$3 be paid. The State Tax Assessor shall report annually the amounts designated for the fund to the State Controller, who shall transfer that amount to the fund;

D. Seed money contributions remaining unspent after a candidate has been certified as a Maine Clean Election Act candidate;

E. Fund revenues that were distributed to a Maine Clean Election Act candidate and that remain unspent after the candidate has lost a primary election or after all general elections;

F. Other unspent fund revenues distributed to any Maine Clean Election Act candidate who does not remain a candidate throughout a primary or general election cycle;

G. Voluntary donations made directly to the fund; and

H. Fines collected under section 1020-A, subsection 4 and section 1127.

3. Determination of fund amount. If the commission determines that the fund will not have sufficient revenues to cover the likely demand for funds from the Maine Clean Election Fund in an upcoming election by January 1st, the commission shall provide a report of its projections of the balances in the Maine Clean Election Fund to the Legislature and the Governor. The commission may submit legislation to request additional funding or an advance on revenues to be transferred pursuant to subsection 2, paragraph B.

21A § 1125. Terms of participation

1. Declaration of intent. A participating candidate must file a declaration of intent to seek certification as a Maine Clean Election Act candidate and to comply with the requirements of this chapter. The declaration of intent must be filed with the commission prior to or during the qualifying period, except as provided in subsection 11, according to forms and procedures developed by the commission. A participating candidate must submit a declaration of intent within five (5) business days of collecting qualifying contributions under this chapter. Qualifying contributions collected before the declaration of intent has been filed will not be counted toward the eligibility requirement in subsection 3.

2. Contribution limits for participating candidates. Subsequent to becoming a candidate as defined by section 1, subsection 5 and prior to certification, a participating candidate may not accept contributions, except for seed money contributions. A participating candidate must limit the candidate's total seed money contributions to the following amounts:

- A. Fifty thousand dollars for a gubernatorial candidate;
- B. One thousand five hundred dollars for a candidate for the State Senate; or
- C. Five hundred dollars for a candidate for the State House of Representatives.

The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter.

2-A. Seed money restrictions. To be eligible for certification, a participating candidate may collect and spend only seed money contributions subsequent to becoming a candidate and prior to certification. A participating candidate may not solicit, accept or collect seed money contributions after certification as a Maine Clean Election Act candidate.

A. All goods and services received prior to certification must be paid for with seed money contributions, except for goods and services that are excluded from the definition of contribution in section 1012, subsection 2, paragraph B. It is a violation of this chapter for a participating candidate to use fund revenues received after certification to pay for goods and services received prior to certification,.

B. Prior to certification, a participating candidate may obligate an amount greater than the seed money collected, but may only receive that portion of goods and services that has been paid for or will be paid for with seed money. A participating candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the commission to remain eligible for certification as a Maine Clean Election Act candidate in accordance with rules of the commission, if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions.

C. Upon requesting certification, a participating candidate shall file a report of all seed money contributions and expenditures. If the candidate is certified, any unspent seed money will be deducted from the amount distributed to the candidate as provided in subsection 8.

3. Qualifying contributions. Participating candidates must obtain qualifying contributions during the qualifying period as follows:

- A. For a gubernatorial candidate, at least 3,250 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate;
- B. For a candidate for the State Senate, at least 150 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or
- C. For a candidate for the State House of Representatives, at least 50 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate.

A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A candidate may pay the fee for a money order that is a qualifying contribution in the amount of \$5 as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules. A money order must be signed by the contributor to be a valid qualifying contribution. The commission may establish by routine technical rule, adopted in accordance with Title 5, Chapter 375, subchapter 2-A, a procedure for a qualifying contribution to be made by a credit or debit transaction and by electronic funds transfer over the Internet. Records containing information provided by individuals who have made qualifying contributions over the Internet are confidential, except for the name of the individual making the contribution, the date of the contribution, the individual's residential address and the name and office sought of the candidate in whose support the contribution was made.

It is a violation of this chapter for a participating candidate or an agent of the participating candidate to misrepresent the purpose of soliciting qualifying contributions and obtaining the contributor's signed acknowledgment.

4. Filing with commission. A participating candidate must submit qualifying contributions, receipts and acknowledgment forms, proof of verification of voter registration and a seed money report to the commission during the qualifying period according to procedures developed by the commission, except as provided under subsection 11. Candidates for Governor shall also submit photocopies of all seed money contributions received by check or money order, bank or merchant account statements of contributions received by credit or debit card and bank or other account statements for the campaign account.

5. Certification of Maine Clean Election Act candidates. Upon receipt of a final submittal of qualifying contributions by a participating candidate, the commission or its executive director shall determine whether the candidate has:

- A. Signed and filed a declaration of intent to participate in this Act;
- B. Submitted the appropriate number of valid qualifying contributions;
- C. Qualified as a candidate by petition or other means;
- D. Not accepted contributions, except for seed money contributions, and otherwise complied with seed money restrictions;
 - D-1. Not run for the same office as a nonparticipating candidate in a primary election in the same election year;
 - D-2. Not been found to have made a material false statement in a report or other document submitted to the commission;
 - D-3. Not had prior requests for certification denied on the basis of substantial violations of this chapter or Chapter 13 or certification revoked under subsection 5-A, paragraphs C to G;

D-4. Not failed to pay any civil penalty assessed by the commission under this Title, except that a candidate has 3 business days from the date of the request for certification to pay the outstanding penalty and remain eligible for certification; and

E. Otherwise met the requirements for participation in this Act.

The commission or its executive director shall certify a candidate complying with the requirements of this section as a Maine Clean Election Act candidate as soon as possible after final submittal of qualifying contributions and other supporting documents required under subsection 4 but no later than 3 business days for legislative candidates and five (5) business days for gubernatorial candidates. The commission and its executive director may take additional time if further investigation is necessary to verify compliance with this Act as long as the commission notifies the candidate regarding the anticipated schedule for conclusion of the investigation.

A certified candidate must comply with all requirements of this Act after certification and throughout the primary and general election periods. Failure to do so is a violation of this chapter.

5-A. Revocation of certification. The certification of a participating candidate may be revoked at any time if the commission determines that the candidate or an agent of the candidate:

- A. Did not submit the required number of valid qualifying contributions;
- B. Failed to qualify as a candidate by petition or other means;
- C. Submitted any fraudulent qualifying contributions or qualifying contributions that were not made by the named contributor;
- D. Misrepresented to a contributor the purpose of the qualifying contribution or obtaining the contributor's signature on the receipt and acknowledgement form;
- E. Failed to fully comply with the seed money restrictions;
- F. Knowingly accepted any contributions, including any in-kind contributions, or used funds other than fund revenues distributed under this chapter to make campaign-related expenditures without the permission of the commission;
- G. Knowingly made a false statement or material misrepresentation in any report or other document required to be filed under this chapter or Chapter 13; or
- H. Otherwise substantially violated the provisions of this chapter or Chapter 13.

The determination to revoke the certification of a candidate must be made by a vote of the members of the commission after an opportunity for a hearing. A candidate whose certification is revoked shall return all unspent funds to the commission within three (3) days of the commission's decision and may be required to return all funds distributed to the candidate. In addition to the requirement to return funds, the candidate may be subject to a civil penalty under section 1127. The candidate may appeal the commission's decision to revoke certification in the same manner provided in subsection 14, paragraph C.

5-B. Restrictions on serving as treasurer. A certified candidate may not serve as a treasurer or deputy treasurer for that candidate's campaign.

6. Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The commission shall publish guidelines outlining permissible campaign-related expenditures.

6-A. Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 8 for certified candidates in a contested election.

6-B. Expenditures as payment to household members. A candidate may not make expenditures using fund revenues to pay the candidate, a member of the candidate's household or a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest, unless the candidate submits evidence according to procedures established by the commission that the expenditure will be made:

- A. For a legitimate campaign-related purpose;
- B. To an individual or business that provides the goods or services being purchased in the normal course of their occupation or business; and
- C. In an amount that is reasonable taking into consideration current market value and other factors the commission may choose to consider.

This subsection does not prohibit reimbursement to a member of a candidate's household when made in accordance with this chapter and rules adopted by the commission.

7. Timing of fund distribution. The commission shall distribute to certified candidates revenues from the fund in amounts determined under subsection 8 in the following manner.

- A. Within three (3) days after certification, for candidates certified prior to March 15th of the election year, revenues from the fund must be distributed as if the candidates are in an uncontested primary election.
- B. Within three (3) days after certification, for all candidates certified between March 15th and April 15th of the election year, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested primary election.

B-1. For candidates in contested primary elections receiving a distribution under paragraph A, additional revenues from the fund must be distributed within three (3) days of March 15th of the election year.

C. No later than three (3) days after the primary election results are certified, for general election certified candidates, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested general election.

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability and safeguards the integrity of the fund.

7-A. Deposit into account. The candidate or committee authorized pursuant to section 1013-A, subsection 1, shall deposit all revenues from the fund and all seed money contributions in a campaign account with a bank or other financial institution. The campaign funds must be segregated from, and may not be commingled with, any other funds.

8. Amount of fund distribution. By July 1, 1999 of the effective date of this Act, and at least every four (4) years after that date, the commission shall determine the amount of funds to be distributed to participating candidates based on the type of election and office as follows.

A. For contested legislative primary elections, the amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all contested primary election races for the immediately preceding two primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives.

B. For uncontested legislative primary elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all uncontested primary election races for the immediately preceding two primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives.

C. For contested legislative general elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races for the immediately preceding two general elections, as reported in the initial filing period subsequent to the general election for the respective offices of State Senate and State House of Representatives.

D. For uncontested legislative general elections, the amount of revenues to be distributed from the fund is 40% of the amount distributed to a participating candidate in a contested general election.

E. For gubernatorial primary elections, the amount of revenues distributed is \$200,000 per candidate in the primary election.

F. For gubernatorial general elections, the amount of revenues distributed is \$600,000 per candidate in the general election.

If the immediately preceding election cycles do not contain sufficient electoral data, the commission shall use information from the most recent applicable elections.

9. Matching funds. When any report required under this chapter or Chapter 13 shows that the sum of a candidate's expenditures or obligations, contributions and loans, or fund revenues received, whichever is greater, in conjunction with independent expenditures reported under section 1019-B, exceeds the sum of an opposing certified candidate's fund revenues, in conjunction with independent expenditures, the commission shall issue immediately to the opposing certified candidate an additional amount equivalent to the difference. Matching funds for certified candidates for the Legislature are limited to two times the amount originally distributed under subsection 8, paragraph A or C, whichever is applicable. Matching funds for certified gubernatorial candidates in a primary election are limited to two times the amount originally distributed under subsection 8, paragraph E. Matching funds for certified gubernatorial candidates in a general election are limited to the amount originally distributed under subsection 8, paragraph F.

10. Candidate not enrolled in a party. An unenrolled candidate who submits the required number of qualifying contributions and other required documents under subsection 4 by 5:00 p.m. on April 15th preceding the primary election and who is certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7 and 8. Otherwise, an unenrolled candidate must submit the required number of qualifying contributions and the other required documents under subsection 4 by 5:00 p.m. on June 2nd preceding the general election. If certified, the candidate is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsection 8. Revenues for the general election must be distributed to the candidate no later than three (3) days after certification.

11. Other procedures. The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

12. Reporting; unspent revenue. Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. If a certified candidate pays fund revenues to a member of the candidate's immediate family or a business or nonprofit entity affiliated with a member of the candidate's immediate family, the candidate must disclose the family relationship in a manner prescribed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

12-A. Required records. The treasurer shall obtain and keep;

A. Bank or other account statements for the campaign account covering the duration of the campaign;

B. A vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more; and

C. A record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, receipt from the vendor or bank or credit card statement identifying the vendor as the payee.

The treasurer shall preserve the records for two (2) years following the candidate's final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the Commission upon its request.

12-B. Audit requirements for candidates for Governor. The commission shall audit the campaigns of candidates for Governor who receive funds under this chapter to verify compliance with election and campaign laws and rules. Within one month of declaring an intention to qualify for public financing, a candidate for Governor, the campaign's treasurer and any other relevant campaign staff shall meet with the staff of the commission to discuss audit standards, expenditure guidelines and record-keeping requirements.

13. Distributions not to exceed amount in fund. The Commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsections 8 or 9, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than \$500 per donor per election for gubernatorial candidates and \$250 per donor per election for State Senate and State House candidates, up to the applicable amounts set forth in subsections 8 and 9 according to rules adopted by the commission.

14. Appeals. A candidate who has been denied certification as a Maine Clean Election Act candidate, the opponent of a candidate who has been granted certification as a Maine Clean Election Act candidate or other interested persons may challenge a certification decision by the commission or its executive director as follows.

A. A challenger may appeal to the full commission within seven (7) days of the certification decision. The appeal must be in writing and must set forth the reasons for the appeal.

B. Within five (5) days after an appeal is properly made and after notice is given to the challenger and any opponent, the commission shall hold a hearing, except that the commission may extend this period upon agreement of the challenger and the candidate whose certification is the subject of the appeal, or in response to the request of either party upon a showing of good cause. The appellant has the burden of proving that the certification decision was in error as a matter of law or was based on factual error. The commission must rule on the appeal within five (5) business days after the completion of the hearing.

C. A challenger may appeal the decision of the commission in paragraph B by commencing an action in Superior Court within five (5) days of the date of the commission's decision. The action must be conducted in accordance with Rule 80C of the Maine Rules of Civil Procedure, except that the court shall issue its written decision within 20 days of the date of the commission's decision. Any aggrieved party may appeal the decision of the Superior Court by filing a notice of appeal within three (3) days of that decision. The record on appeal must be transmitted to the Law Court within three (3) days after the notice of appeal is filed. After filing the notice of appeal, the parties have four (4) days to file briefs and appendices with the clerk of the court. The court shall consider the case as soon as possible after the record and briefs have been filed and shall issue its decision within 14 days of the decision of the Superior Court.

D. A candidate whose certification as a Maine Clean Election Act candidate is reversed on appeal must return to the commission any unspent revenues distributed from the fund. If the commission or court finds that an appeal was made frivolously or to cause delay or hardship, the commission or court may require the moving party to pay costs of the commission, court and opposing parties, if any.

21A § 1126. Commission to adopt rules

The commission shall adopt rules to ensure effective administration of this chapter. These rules must include but must not be limited to procedures for obtaining qualifying contributions, certification as a Maine Clean Election Act candidate, circumstances involving special elections, vacancies, recounts, withdrawals or replacements, collection of revenues for the fund, distribution of fund revenue to certified candidates, return of unspent fund disbursements, disposition of equipment purchased with clean election funds and compliance with the Maine Clean Election Act. Rules of the commission required by this section are major, substantive rules as defined in Title 5, chapter 375, subchapter II-A.

21A § 1127. Violations

1. Civil fine. In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. The commission may assess a fine of up to \$10,000 for a violation of the reporting requirements of sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds. This fine is recoverable in a civil action. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the committee authorized by the candidate pursuant to section 1013-A, subsection 1, found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the

commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

2. Class E crime. A person who willfully or knowingly violates this chapter or rules of the commission or who willfully or knowingly makes a false statement in any report required by this chapter commits a Class E crime and, if certified as a Maine Clean Election Act candidate, must return to the fund all amounts distributed to the candidate.

21A § 1128. Study report

By January 30, 2002, and every four years after that date, the commission shall prepare for the joint standing committee of the Legislature having jurisdiction over legal affairs a report documenting, evaluating and making recommendations relating to the administration, implementation and enforcement of the Maine Clean Election Act and Maine Clean Election Fund.

MISCELLANEOUS STATUTORY PROVISIONS

36 MRSA §5286. Contribution to Maine Clean Election Fund; voluntary check off

1. Designation. Resident taxpayers may designate that \$3 of their taxes be deposited in the Maine Clean Election Fund in accordance with Title 21-A, section 1124.

2. Forms. The State Tax Assessor shall provide on the first page of the income tax form a space for the filing individual to indicate whether that filer wishes to pay \$3, or \$6 if filing a joint return, from the General Fund of the State to finance the Maine Clean Election Fund.

3. Transfer of funds. The State Tax Assessor shall transfer funds from the General Fund in accordance with Title 21-A, section 1124.